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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of	)	
	)	IB Docket No. 96-111
Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Services In the United States	)	
and	)	
Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations	)	CC Docket No. 93-23 RM-7931
and	)	
COMMUNICATIONS SATELLITE CORPORATION Request for Waiver of Section 25.131(j)(1) of the Commission's Rules as it Applies to Services Provided via the Intelsat K Satellite	)	File No. ISP-92-007

To: The Commission

COMMENTS OF LOCKHEED MARTIN CORPORATION

Lockheed Martin Corporation ("Lockheed Martin") hereby comments, pursuant to Sections 1.415 and 1.419 of the Commission's rules, on the Further Notice of Proposed Rulemaking, FCC 97-252, slip op. (released July 18, 1997) ("Further Notice") in the above-captioned proceedings.

I. INTRODUCTION

In its previous comments in this proceeding, Lockheed Martin, with the support of many other commenting parties, observed that the preferred mechanism for achieving open

markets for satellite services on a worldwide basis is an effective multilateral agreement.[1] Fortunately, in the year since those comments were filed, a firm U.S. stance in the World Trade Organization ("WTO") negotiations concerning basic telecommunications services has yielded a multilateral agreement that Lockheed Martin believes will serve as an effective basis for an open and competitive global telecommunications marketplace. This result was secured in no small measure through the exercise of reasoned U.S. leadership, reflected first in the broad offer of access to the U.S. market which served as an incentive for other countries to come forward with satisfactory market access offers of their own, and, during the subsequent negotiations, in the firm U.S. insistence that an acceptable number of our WTO trading partners do just that.

In order to secure these important benefits of the WTO agreement, however, each administration must implement the accord in ways that are fully consistent with the market access commitments and regulatory principles endorsed in Geneva last February. Once again, it is incumbent upon the U.S., and particularly U.S. regulators, to take the lead and craft licensing procedures and requirements that can serve as a useful model for other jurisdictions. It bears repeating that regional and global satellite systems will be subject to authorization and related regulation in multiple jurisdictions. The Commission must take care to avoid imposing requirements on WTO-based companies that are inconsistent with the obligations assumed by the United States under that accord. Accordingly, the Commission should adopt regulations that reflect approaches it would like to see embraced by other nations, including the adoption of clear and easily understood criteria, avoidance of any action that would constitute "re-licensing" of a system, and implementation of appropriate competition safeguards contained in the Reference Paper.

With these principles in mind, the Commission can adopt a streamlined approach to licensing related to satellite systems based in countries that are WTO Members, while

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[1] Reply Comments of Lockheed Martin at 2 (filed August 16, 1996).

continuing to evaluate the effective competitive opportunities that exist for U.S.-based companies in non-WTO-Member countries.

II. DISCUSSION

A. Application of the ECO-Sat Test In The Aftermath Of The WTO Basic Telecommunications Agreement.

1. Determination of "Home Market."

Lockheed Martin agrees with the Commission's proposal to use an applicant's "home market" to determine whether a system falls within the jurisdiction of a WTO-Member country. A system whose "home market" is not a member of the WTO would continue to be subject to an ECO-Sat analysis. We believe that an applicant's "home market" should be its principal place of business as that is where it is likely to have the most direct economic ties and participate in the domestic processes.

The general application of a route-by-route approach, on the other hand, would be unnecessarily complex. Indeed, it is not clear how such close examination of each and every route to be served by a satellite system would enhance competition, particularly given the likelihood that capital-intensive global satellite ventures are likely to be consortia comprised of investors from multiple countries, including the United States.

2. Satellite Operators Whose Home Market is a Non-WTO-Member Country.

Part of the value of the WTO agreement is that it can serve as a reference point for non-WTO countries in developing their own pro-competitive national telecom policies. In the meantime, however, there may continue to be a need for continued evaluation of effective competitive opportunities with respect to requests for access from satellite systems based in nations not members of the WTO. The WTO has a broad membership encompassing all regions of the world, but that membership still does not cover some of the largest markets. For operators that have these countries as a principal place of business, the ECO-Sat test is still a necessary

element in the evaluation of any application to access these operators' systems in the United States market, and Lockheed Martin endorses the Commission's proposal to continue applying it in this manner with respect to non-WTO home markets. *See* Further Notice at ¶23.

As a practical matter, however, the ECO-Sat analysis would seem to be most efficiently applied solely to the home market of each non-U.S. system seeking U.S. market access, and not to each and every route market to be served. If a system operator is subject to effective competition in its home market, it seems unlikely that the system operator will possess market-distorting power along other routes.

3. Satellite Operators Whose Home Market is a WTO-Member.

In the Further Notice, the Commission states its view that, in the wake of the WTO Agreement, it can be presumed that market forces can be relied upon to promote competition for satellite services among operators that are doing business under the auspices of WTO-Member governments. *See* Further Notice at ¶17. Premised on this presumption, opponents of entry into the U.S. market by such systems would have the burden of demonstrating that market access would pose "a very high risk to competition in the United States satellite market that could not be addressed by conditions imposed on the authorization." *See* Further Notice at ¶18. Lockheed Martin endorses this view. Commencing January 1, 1998, the effective date of the WTO Agreement, the Commission should not use any form of the ECO-Sat test in considering requests for access to satellites operated by companies from WTO-Member countries.

Although the Commission separately raises the issue of what should be done with respect to satellites operated by companies from WTO-Member countries that propose to offer service to non-WTO route markets (*see* Further Notice at ¶ 25), Lockheed Martin does not believe that this element should fundamentally alter the test employed. For the same reasons discussed above in connection with the direct application of the ECO-Sat test to those from non-

WTO home markets, Lockheed Martin does not believe that a route-by-route analysis should be the presumptive approach in such circumstances.

4. Services Exempt From Most-Favored-Nation Obligations.

The Commission also proposes in the Further Notice to continue applying an ECO-Sat analysis to those specific satellite-delivered services for which the U.S. took an MFN exemption. *See* Further Notice at ¶ 21. These services include direct broadcast satellite ("DBS"), digital audio radio service ("DARS"), and fixed-satellite service direct-to-home television ("FSS DTH"). Even some of the more liberally-disposed WTO members, including major U.S. trading partners, have content-based reservations with respect to these types of services that may preclude open-entry in the near term. Accordingly, Lockheed Martin supports the Commission's proposal to use an ECO-Sat test to evaluate market access requests in the DBS, DARS and FSS-DTH services. There is no need to alter this approach at this time; although, the ECO-Sat analysis should clearly be set aside for those countries, such as Mexico, for which a bilateral agreement is in force. *See* Further Notice at ¶¶ 29-30.

5. GMPCS.

In response to the Commission's request for comment on GMPCS terminals, Lockheed Martin believes that applications for blanket/class licenses for these terminals to access a non-U.S. system should be treated no differently from other earth station applications seeking to access a non-U.S. system. Specifically, if an application is to access a non-U.S. system whose home market is a WTO-Member country, then no ECO-Sat test should apply pursuant to the WTO accord. However, any such application to access a non-WTO-Member system should be subject to an ECO-Sat test.

It may be appropriate, however, to consider whether the home market is a Signatory to the GMPCS MoU and has notified the ITU of its intent to implement, or its implementation of, the GMPCS MoU arrangements, which are currently being finalized.

B. **General Public Interest Considerations.**

Lockheed Martin concurs generally with the Commission's proposal to consider, with guidance from the Executive Branch where appropriate, certain criteria related to the public interest that may be relevant to authorizations for access to any satellite system, whether U.S. or not. *See* Further Notice at ¶ 6.

Specifically, relevant public interest criteria could relate to national security, law enforcement, foreign policy, trade policy, spectrum management, or the impact on the U.S. market for domestic and international satellite services. Several of the public interest criteria are clearly recognized within the WTO agreement, particularly the Reference Paper.

Not all of the specified considerations, however, continue to be appropriate for applications to access systems based in WTO-Member countries. Specifically, the "trade" element which was explicitly incorporated into the public interest test prior to the WTO Agreement would no longer seem relevant or appropriate considering the binding WTO obligations of the U.S. Government. In crafting rules for assessing applications to access systems from WTO-member countries, the Commission must remain true to the commitments of the U.S. Government to the WTO Agreement. While the Commission must always assess the public interest concerns of every application for use of the spectrum, because of the WTO Agreement, the Commission must be very careful that the public interest assessment is neither used nor perceived as a surrogate for consideration of trade issues which were put to rest with the U.S. commitment in the WTO to open our telecommunications market.

The other factors enumerated by the Commission, however, are appropriately a part of any market entry determination to the extent that they are implicated by a particular proposal. For example, illegal conduct, especially anti-competitive conduct, by the prospective operator would clearly constitute a basis for rejecting access to the U.S. market. Thus, the Commission should retain the authority to place specific conditions on market access where anti-

competitive conduct is deemed likely or identified. Moreover, opponents of entry into the U.S. market of a particular system should have the opportunity to demonstrate that a system operator's activities in a particular country pose a real threat to competition in the U.S., even if the system operator itself is not obligated in the first instance to demonstrate that competitive opportunities exist. In such circumstances, however, opponents should have the burden of demonstrating that such access would pose a high risk of harm to competition in the United States satellite market. In addition, the Executive Branch may sometimes advise the Commission on legitimate national security, foreign policy and law enforcement concerns with respect to specific applications. If and when these concerns are brought to the Commission's attention by the Executive Branch, the Commission may defer. *See* Further Notice at ¶¶ 41-43.

C. Treatment of Inter-Governmental Satellite Organizations ("IGOs") And Their Affiliates.

The Commission observes in the Further Notice that an ECO-Sat test poses analytical difficulties in the case of intergovernmental satellite organizations ("IGOs") because "no single nation can realistically be deemed the home market of an IGO." Further Notice at ¶ 31. These entities do not benefit from the terms of the WTO Basic Telecom Agreement, however, and thus some mechanism is needed to evaluate future expansion of IGO services. *Id.* at ¶ 32.

Lockheed Martin affirms its prior view that core treaty-based services offered by Intelsat and Inmarsat should not be subject to any ECO-Sat analysis. These services should continue to be authorized in the same manner as they have in the past. Indeed, to the extent that direct access in the U.S. to Intelsat or Inmarsat facilities by non-Signatory entities may afford opportunities to enhance competition in the U.S. satellite services market, it would be anomalous to subject these providers to an uncertain ECO-Sat analysis for the IGO to secure this competitive access.

Lockheed Martin believes that any concerns related to Intelsat or Inmarsat, from a trade perspective, have always flowed from their near-ubiquitous global coverage, market power and breadth of membership. Many smaller satellite organizations, e.g., Eutelsat or Palapa, do not have these same attributes and consequently do not present the same scope and market concerns inherent in Intelsat or Inmarsat. In any rules resulting from this NPRM concerning IGOs and their affiliates, the Commission should recognize the need to tailor narrowly these provisions so as to address the market power, breadth of membership and global coverage apparently prevalent only in Intelsat and Inmarsat.

Following full or partial privatization, restructured entities that have been spun off from Intelsat or Inmarsat can be evaluated under the ECO-Sat test if non-WTO based or under the WTO-Member standard, whichever is appropriate, just as any other non-U.S.-based system. There is no need to distinguish between IGO-affiliates and non-affiliates for purposes of this basic analysis. That fact notwithstanding, however, to the extent that ties remain between an IGO and its spin-off, the Commission will need to consider any potentially anti-competitive or market distorting consequences of such a continued relationship. *See* Further Notice at ¶ 36. A prominent feature of the U.S. proposals for the restructuring of Intelsat has been the level of investment in any spin-off or affiliate has been primarily funded from external sources, i.e., unrelated to the current Intelsat structure. Lockheed Martin concurs that this is an indicia of a pro-competitive, market-oriented approach to structuring affiliates or spin-offs, and believes that in evaluating applications by IGO "spin-offs" for access to the U.S. market, a primary consideration should be the degree of external, non-IGO-related investment in the "affiliate," as a significant percentage of outside investment can be viewed as a counterbalance to any lingering incentives for preferential treatment or cross-subsidy.

III. CONCLUSION

Based on the foregoing discussion, as well as Lockheed Martin's comments and reply comments filed earlier in this proceeding, we urge thproceeding as soon as possible. Actions taken by the Commission in this proceeding are very likely to serve as a model for other Administrations in implementing their commitments under the WTO Agreement. Given that the agreement enters into force in four months' time, the sooner the results of this proceeding are available, the more likely it is that U.S. industry, other entities abroad, and other governments can prepare for the changes resulting from this process and borrow from the U.S. model for WTO implementation.

Respectfully submitted,

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